Reportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO. 17356-58/2006

Date of Decision: February 13 , 2007

Ram Bhawan and others ..... Petitioners

Through Ms. Anu Mehta, Advocate

versus

N.D.M.C. ..... Respondent

Through Mr. P.C.Sen, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether Reporters of the Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

The short question which arises for consideration in this writ petition is whether the petitioners/workmen, namely, Ram Bhawan, Mam Chand and Nanehey Lal who joined the N.D.M.C. in 1984 as daily wage beldars and were later regularised as beldars with effect from 1st April, 1997 are entitled to be regularised with effect from the date of their initial appointment and further whether they are entitled to be paid wages as were being paid to the regular beldars on the principle of 'equal pay for equal work'.

It is not disputed that the petitioners were appointed as

beldars on daily-wage-basis and they continued to work in that capacity for 6-7 years till they raised an industrial dispute in the year 1990 seeking their regularisation as beldars from the date of their initial appointment. The dispute was referred to the Industrial Tribunal – II, Karkardooma Courts, Delhi. The reference made was to the following effect:

> "Whether the workmen mentioned in the Annexure 'A' are entitled to be regularised from their initial date of appointment and if so, to what relief are they entitled and what directions are necessary in this respect?"

It is also not disputed that the petitioners were regularised as beldars with effect from 1.4.1997 pursuant to a policy decision taken by the respondent. However, since the said policy did not meet the aspirations of the petitioners who wanted their regularisation with effect from their initial appointment, they persisted with the reference pending before the Industrial Tribunal. The reference, in so far as the case of petitioners is concerned was answered in the negative by the Industrial Tribunal vide its award dated 21.7.2006. The relevant paragraphs of the award which deal with the case of the petitioners are paragraphs 24 & 25. This is how they read:-

> "24. The case of the Beldars & Sweepers can be taken as the first category. They had been regularised in accordance with the policies of the management with effect from 01.04.97. They are claiming regularisation from the date of their initial appointment. They are also

> claiming equal pay for equal work from the date of their initial appointment. It is now settled law that persons appointed on ad hoc basis or without following the due process of selection cannot claim the regularisation as a matter of right. It has been so held that in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, page 197 in Appeal No. 3595-3612 of 1999. The Beldars therefore, have no right for regularisation from the date of their initial appointment because their initial appointment was not against any permanent post or against a regular vacancy. They have been regularised by the management in accordance with the scheme prepared under the policy contained in Ex.MW1/W1. There is no scope for any further relief being granted to Beldars and Sweepers with respect to the date of regularisation.
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> 25. The claim for equal pay for equal work is not covered by the terms of reference and therefore, cannot be granted."

It is these findings of the Industrial Tribunal which have been assailed in this writ petition.

It will be seen from the paragraphs quoted above that the Industrial Tribunal has based its finding on the fact that the initial appointments of the petitioners were not against any permanent post or against a regular vacancy. This fact is not in dispute. As a matter of fact, the petitioners themselves have stated in the writ petition that

when they joined service, they were kept on regular muster rolls. Of course, they have also stated that the respondents omitted to create necessary posts in the Composed Plant where they were suppose to work but this averment even if it is assumed to be correct is of no assistance to them because it does not alter the fact that when they were taken on muster rolls, there were no regular posts of beldars.

The Apex Court in the case of **Secretary, State of Karnatka & Others vs. Uma Devi & Others** reported as 2006 (4) SCC 1 on the basis of which the Tribunal has denied regularisation to the petitioners has held as under:-

> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually

got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a

> magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 if the Constitution.

The above quoted paragraphs clearly lay down that if an employee was initially appointed on an engagement which is temporary or casual in nature, he cannot seek permanence on the same merely because he had continued to work as such for a considerable long period. The appointment of the petitioners as daily wage beldars was de-hors the Recruitment Rules and those appointments were not against any vacancy or a post. Therefore, the petitioners have no right to be regularised with effect from the date of their initial appointment.

It was sought to be contended by learned counsel for the petitioner that, if not from the date of initial appointment of the petitioners, they were at least entitled to be regularised after the expiry of six years from the date of their initial appointment in terms of

the policy of the Government under which they were regularised with effect from 1.4.1997. The policy to which reference has been made was intended to regularise all those beldars, who at the time it was brought into effect, had put in six years of service without break as daily wagers. It was intended to apply prospectively and was not aimed to effect regularisation retrospectively by reckoning six years from the date of initial appointment of the employees. The submission, therefore, has no merit.

It was also contended that the petitioners were entitled to same wages as were being paid to a regular beldar since the date of their initial appointment till they were regularised on the basis of principle of 'equal pay for equal work'. The Tribunal declined to go into this question and to my mind rightly. It has held that it was beyond the scope of its reference. The terms of reference have been reproduced above. They did not include the question whether the petitioners were entitled to wages as were being paid to regular employees on the principle of equal pay for equal work.

For the foregoing reasons, I find no merit in this writ petition. The same is dismissed leaving the parties to bear their own costs.

February 13 , 2007 **REKHA SHARMA, J.**
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